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Nos. 16A1190 and 16A1191

In The
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

HAWAII, ET AL.

ON APPLICATIONS FOR STAYS TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF FOR INTERFAITH GROUP OF RELIGIOUS AND INTERRELIGIOUS ORGANIZATIONS AS AMICI CURIAE SUPPORTING RESPONDENTS' OPPOSITIONS TO THE STAY APPLICATIONS

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MOTION OF INTERFAITH GROUP OF RELIGIOUS AND INTERRELIGIOUS ORGANIZATIONS TO FILE A BRIEF AS AMICI CURIAE SUPPORTING RESPONDENTS' OPPOSITIONS TO THE STAY APPLICATIONS

An interfaith group of religious and interreligious organizations—consisting of the Alliance of Baptists; the American Jewish World Service; the Anti-Defamation League; Church World Service; Disciples Home Missions; Franciscans for Justice; the Friends Committee on National Legislation; Interfaith Alliance; Islamic Relief USA; the Leadership Conference of Women Religious; the Missionary Servants of the Most Holy Trinity; Muslim Advocates; the National Council of Jewish Women; the Reconstructionist Rabbinical Association; the School Sisters of Saint Francis, United States Province; Sojourners; the Southwest Conference of the United Church of Christ; T'ruah: The Rabbinic Call for Human Rights; the Union for Reform Judaism; the Central Conference of American Rabbis; Women of Reform Judaism; and the Unitarian Universalist Association—respectfully move this Court for leave to file the accompanying brief, as amici curiae in support of respondents' oppositions to the stay applications.

Letters from counsel for all parties consenting to the filing of this brief have been filed with the Clerk of this Court.

The prospective amici here would be affected if the stay applications were granted. As faith-based organizations, the prospective amici depend heavily on

the guarantee of the Establishment Clause that the government cannot single out one faith as favored or disfavored. Yet, as the lower courts found, although Executive Order 13,780 does not expressly mention Islam, it is targeted at Islam. The prospective amici seek to participate here to express how permitting the Order to become effective would harm not only Muslims living in the United States but also members of all faiths. In addition, as explained in the accompanying brief, issuing the requested stays would directly affect the prospective amici's ability to fulfill their moral and religious obligations to provide aid to refugees in need.

Accordingly, the prospective amici respectfully request leave to file the accompanying brief.

Respectfully submitted,

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Dan Barry, "A Resettlement Mission Upended by the Sweep of a President's Pen," *N.Y. Times* (Feb. 5, 2017) 21

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BRIEF FOR INTERFAITH GROUP OF RELIGIOUS AND INTERRELIGIOUS ORGANIZATIONS AS AMICI CURIAE SUPPORTING RESPONDENTS' OPPOSITIONS TO THE STAY APPLICATIONS

Amici curiae, an interfaith group of religious and interreligious organizations, respectfully submit this brief in support of respondents' oppositions to the stay applications.[1]

INTEREST OF AMICI CURIAE

Amici are a diverse group of twenty-two faith-based and interfaith religious associations, congregations, and organizations, pursuing their respective faiths alongside each other and standing for the right of all believers to practice their religions, as guaranteed by the First Amendment. Amici have a wide array of beliefs and come from different faith traditions, yet they unite here to speak with one voice in urging the Court not to grant relief that would result in the reinstatement of Executive Order 13,780.

The Order harms amici. Although the Order is ostensibly a nationality-based ban and a ban on the admission of refugees, it is focused on citizens of majority-Muslim nations. Amici therefore see it for what it is: anti-Muslim discrimination. Such government-imposed discrimination has real harms.

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amici, their members, or their counsel made a monetary contribution to its preparation or submission. All parties have consented to the filing of this brief.

By targeting members of a particular faith, it promotes dangerous stereotypes and fosters baseless fear. Discrimination against members of one faith harms people of other faiths as well. All religious people in this Nation depend on the right to practice their faiths free from discrimination. When religious-based discrimination is permitted—especially when propagated at the highest levels of government—the free-exercise right of members of all faiths is affected. Additionally, because amici's various faiths commit them to helping others who have been victims of war, hunger, and persecution—and, in particular, to helping refugees—this case directly implicates amici's ability to practice their religions and to carry out their missions.

Amici curiae are as follows:

The **Alliance of Baptists** is a faith community comprised of 140 congregations across the United States and over 3,000 individual members—Christians knit together by love for God, committed to religious liberty for all, whatever their faith tradition, including those of no faith. Its response to the call of God in Jesus Christ to be disciples and servants includes a commitment to prophetic action to bring about justice and healing in our world. The Alliance, whose congregations work with and support refugees and immigrants, joins this amicus brief in response to a Covenant of commitment to side with those who are poor and pursue justice with and for those who are oppressed.

American Jewish World Service is the first and only Jewish organization dedicated solely to ending poverty and promoting human rights in the developing world. AJWS joins this amicus brief because welcoming refugees and immigrants is central to American identity, and because as a Jewish American organization, AJWS cannot stand idly by while ethnic and religious minorities are under attach for simply being who they are.

Founded in 1913, the **Anti-Defamation League** is a civil-rights and human-relations organization that works to combat intolerance and hatred, seeks to stop the defamation of the Jewish people, and fights to secure justice and fair treatment for all people. Rooted in Jewish values that command offering welcome to the stranger, and understanding that the Jewish community has experienced the plight of living as refugees throughout history, ADL opposes efforts to turn away those desperately seeking safety. Through its twenty-six regional offices throughout the United States, ADL provides materials, programs and services to combat anti-Semitism and all forms of bigotry.

Church World Service, a humanitarian agency that brings together thirty-seven Protestant, Anglican, and Orthodox member communions, is one of the nine refugee resettlement agencies in the United States, and, through a center in Nairobi, also assists with the processing of all refugees resettled to the United States from Africa. CWS, the National Council of Churches, and their constituencies, representing 30

million people in the United States, issued the "Ecumenical Declaration to Protect Welcome and Restore Hope," declaring to the President, members of Congress, and their own constituencies their strong opposition to the Executive Order and their "moral responsibility to speak out and advocate alongside all immigrants and refugees to stop these unjust and immoral executive orders."

Disciples Home Missions is the enabling and coordinating expression of the **Christian Church (Disciples of Christ)** in the United States and Canada in the areas of congregational programming and mission in North America. With over 750,000 members in more than 3,800 congregations, DHM and its Refugee and Immigration Ministries engage congregations and members in advocacy to support refugee and immigrant rights, and to ensure ongoing and vigorous resettlement and partnerships with refugees within the United States. It has, since 1949, resettled more than 38,000 refugees and assisted countless people facing immigration problems.

Franciscans for Justice is a joint project of the Franciscan Friars of the St. Barbara Province and the Our Lady of Guadalupe Province that includes more than 200 friars throughout the western United States. For over 800 years, Franciscans have upheld the fact that twice St. Francis of Assisi went to the Muslim sultan, not to convert him, but to befriend him; Franciscans hold Muslim believers dear to our hearts.

Franciscans for Justice challenges the U.S. government to reach out to all Muslim refugees—not to ban them, but to befriend them.

The **Friends Committee on National Legislation** is the oldest religious lobby in Washington, D.C., lobbying Congress and the Administration to advance peace, justice, opportunity, and environmental stewardship. FCNL opposes the Executive Order because it goes against our core values of welcome, religious freedom, and assistance to those most in need. The Muslim and refugee ban is discriminatory, unconstitutional, and immoral.

Interfaith Alliance advocates from a faith perspective for the guarantees of the independence of conscience from government and of government from religion, including special attention to the rights of minorities. It rejects any religious test in this country, not just for elected office but also for securing the blessings of life, liberty, and the pursuit of happiness. It believes the attempt to exclude immigrants and refugees because they are part of a particular religion or subset of that religion violates the nation's basic values and constitutional guarantees.

Islamic Relief USA is a nonprofit humanitarian organization that provides the necessities of life in refugee camps outside the United States and resettlement aid to refugees here. Its work to protect the most vulnerable in the human family, particularly those who have fled poverty, violence, and oppression, is guided by the timeless values and teachings provided

by the revelations contained within the Qur'an and prophetic example. Despite the fear and anguish created by this Executive Order, which has profoundly affected its staff, donors, and beneficiaries, Islamic Relief USA continues to reach out to its neighbors in love and serve them with dignity believing that what unites us is stronger than the fears that divide us.

The **Leadership Conference of Women Religious**, founded in 1956, is an association of leaders of congregations of Catholic women religious. LCWR has nearly 1,300 members, who represent approximately 38,800 women religious. LCWR has joined this amicus brief because Catholic sisters began coming to these shores 288 years ago as immigrants to serve the immigrant and refugee communities and continue to this day to minister to refugees and new immigrants in schools, hospitals, and social service agencies.

The **Missionary Servants of the Most Holy Trinity**, founded in 1929, is a congregation of Catholic priests and Brothers who work in the United States and Latin America with the poor and abandoned, including recent immigrants.

Muslim Advocates, a national legal advocacy and educational organization formed in 2005, works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. Muslim Advocates advances these objectives through litigation and other legal advocacy, policy engagement, and civic education. Muslim Advocates also serves as a legal resource for the American Muslim community, promoting the full

and meaningful participation of Muslims in American public life.

The **National Council of Jewish Women** is a grassroots organization of 90,000 volunteers and advocates who are inspired by Jewish values to strive for social justice. NCJW joins this brief in keeping with its formal resolve to work for "[c]omprehensive, humane, and equitable immigration, refugee, asylum, and naturalization laws, policies, and practices that facilitate and expedite legal status and a path to citizenship for more individuals."

The **Reconstructionist Rabbinical Association**, established in 1974, represents 350 rabbis across North America and serves as a voice of Reconstructionist Jewish values in partnership with more than 100 Reconstructionist Jewish congregations and their members. Its understanding of Jewish tradition and experience compels its support for refugees and immigrants as an act of justice and compassion in the world.

The **School Sisters of Saint Francis, United States Province** are part of an international congregation of religious women. The United States Province was established when immigrant sisters came to the United States from Europe in order to work with immigrants. Its mission is to serve the poor and otherwise needy. As a province, it joins the ranks of others who wish to speak out to challenge the anti-refugee Executive Order.

Founded in the early 1970s, **Sojourners** believes that U.S. citizens, immigrants, and refugees who practice their Islamic faith in this country are brothers and sisters as fellow human beings and children of God. The violation of the religious freedom of Muslim brothers and sisters must not be accepted by any people of faith.

The **Southwest Conference of the United Church of Christ** provides support and services to approximately 6,000 members and clergy in forty-seven local congregations in Arizona, New Mexico, and part of Texas. The United Church of Christ is a mainline Protestant denomination derived in part from Puritan and Pilgrim immigrants in the early 1600s and German immigrants in the 1800s. Its mission statement, "extravagantly welcoming and affirming followers of Christ called to embody God's unconditional justice and love," is manifested in a deep commitment to a ministry of extravagant welcome to migrants, undocumented residents, refugees, and others.

T'ruah: The Rabbinic Call for Human Rights brings together rabbis and cantors from all streams of Judaism, together with all members of the Jewish community, to act on the Jewish imperative to respect and advance the human rights of all people. It joins this amicus brief to express condemnation of the Executive Order, which effectively closes the nation's borders to Muslims and flagrantly violates America's longstanding, values-driven commitment to serving as a safe haven for refugees.

The **Union for Reform Judaism**, whose 900 congregations across North America include 1.5 million Reform Jews, the **Central Conference of American Rabbis**, whose membership includes more than 2,000 Reform rabbis, and **Women of Reform Judaism**, which represents more than 40,000 women in nearly 400 women's groups in North America and around the world, come to this issue out of their longstanding commitment to the principle of religious liberty, believing that the First Amendment to the Constitution is the bulwark of religious freedom and interfaith amity. The concept of religious freedom has lifted up American Jewry, as well as other religious minorities, providing more protections, rights, and opportunities than have been known anywhere else throughout history.

The **Unitarian Universalist Association** represents 200,000 members of more than 1,000 Unitarian Universalist congregations nationwide and is dedicated to the principle of freedom of religion for all people and to freedom from oppression. The UUA has joined the amicus brief because it believes that the Executive Order is unconstitutional and undermines the UUA's core principles.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici, who represent members of a wide range of faiths and sects, are acutely aware that when the U.S. government carries out official acts that are motivated by religious animus, it harms people of all faiths. Executive Order 13,780 is such an act—the result of the President's long-stated objective to exclude (at least temporarily) Muslims from entering this Nation. The Order offends the very notion of the United States "as a refuge of religious tolerance" for people of all faiths. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1153 (10th Cir. 2013) (Gorsuch, J., concurring), *aff'd*, 134 S. Ct. 2751 (2014). The Establishment Clause's central purpose is to protect religious liberty by prohibiting the government from picking and choosing among faiths, or from singling out any one faith for disfavor. The Order contravenes that purpose, harming not only members of Islam but members of all faiths as beneficiaries of this Nation's commitment to religious free exercise. It further harms groups such as amici whose faiths compel them to aid refugees who are fleeing war and persecution.

History teaches that government discrimination against members of one faith must be opposed by people of all faiths. Reinstating the Order, as applicants ask, would do far more than harm the litigants who have challenged it; it would harm people of all faiths whose most central beliefs and actions depend on the First Amendment's protections. The requests for stays should be denied.

ARGUMENT

A. The Executive Order Contravenes Core Constitutional Principles Critical To The Free Exercise Of All Faiths

In contrast with many other countries, where religious conflict has at times led to upheaval and suffering, a defining trait of the United States has been its ability to be open to different religions and encourage their coexistence. "It was in large part to get completely away from * * * religious persecution that the Founders brought into being our Nation, our Constitution, and our Bill of Rights with its prohibition against any governmental establishment of religion." *Engel v. Vitale*, 370 U.S. 421, 433 (1962). As a result of those guarantees, the United States is a country of vibrant religious beliefs, practices, and communities in which faith continues to play an important role in most Americans' lives.

The Nation's commitment to religious freedom and non-discrimination is firmly woven into our national fabric and our constitutional system. The government is prohibited from favoring a particular religion over others and from singling out any religion for opprobrium. The Establishment Clause "forbids an official purpose to disapprove of a particular religion or of religion in general." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993); *see also W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can

prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.").

This Court has long recognized that efforts by the government to favor one religion "inevitabl[y] result" in incurring "the hatred, disrespect and even contempt of those who h[o]ld contrary beliefs." *Engel*, 370 U.S. at 431. Such acts send messages to members of minority faiths "that they are outsiders, not full members of the political community." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). That is all the more true when the government singles out one religion for *disfavor*, as it has done here.

The harm caused by singling out members of one religious faith is not restricted to the disfavored sect; it extends to all religious groups by eroding core principles that have allowed a multitude of faiths to coexist and thrive. Protections for the free exercise of religion are critical to "vindicat[e] this nation's long-held aspiration to serve as a refuge of religious tolerance." *Hobby Lobby Stores*, 723 F.3d at 1153 (Gorsuch, J., concurring); *see Town of Greece v. Galloway*, 134 S. Ct. 1811, 1823 (2014) (official efforts to "denigrate * * * religious minorities" violate the Establishment Clause). By both protecting the free exercise of religion and prohibiting the government from favoring or disfavoring any one religion, the First Amendment "seek[s] to avoid * * * divisiveness based upon religion that promotes social conflict, sapping the strength of

government and religion alike." *Van Orden v. Perry*, 545 U.S. 677, 698 (2005) (Breyer, J., concurring).

Permitting the Executive Order to take effect would undermine these fundamental protections on which all religious groups rely.

B. Members Of The Faith Community, Who Themselves Have Been Targets Of Persecution, Recognize That The Order Is Intended To Target Muslims

The Order is clearly intended to do what the Establishment Clause forbids: target members of one faith, Islam.

Amici, both as faith leaders and as members of faiths that have experienced religious persecution, are unfortunately familiar with the history of religious minorities who have faced discrimination and exclusion from the United States based on stereotypes and stigma. One of the most famous examples is from 1939, when a ship carrying more than 900 Jewish men, women, and children who were fleeing Nazi Germany was turned away from U.S. shores. Many in the United States suspected that these Jewish refugees were threats to national security. The ship was forced to return to Europe, and more than a quarter of its passengers perished in the Holocaust. *See* Daniel A. Gross, "The U.S. Government Turned Away Thousands of Jewish Refugees, Fearing That They Were Nazi Spies,"

Smithsonian.com (Nov. 18, 2015).[2] As another example, the large influx of Catholic immigrants in the mid-nineteenth century led to anti-Catholic riots, burnings of Catholic churches, beatings of Catholic students who refused to use the King James Bible, and the rise of nativist political movements that campaigned to restrict immigration by Catholics. *See* Michael W. McConnell, *Is There Still a "Catholic Question" in America? Reflections on John F. Kennedy's Speech to the Houston Ministerial Association*, 86 Notre Dame L. Rev. 1635, 1639 (2011).

"[F]ormally neutral, generally applicable laws" have been "central to the * * * worst episodes of religious persecution in our history." Douglas Laycock, *The Religious Freedom Restoration Act*, 1993 B.Y.U. L. Rev. 221, 223 (1993). For example, Mormons faced persecution in the nineteenth century as they were driven across the country and faced with oaths that resulted in denial of their right to vote. *Ibid.* And Jehovah's Witnesses in the early- and mid-twentieth century were forced to salute the flag, and children were often beaten in schools when they refused. *Ibid.*; *see also Barnette*, 319 U.S. at 629 (noting that children who refused faced suspension and could be treated as delinquents).

Although the Order here does not expressly mention Islam, amici understand it for what it is: an official act of discrimination on the basis of religion. As the

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[2] http://www.smithsonianmag.com/history/us-government-turned-away-thousands-jewish-refugees-fearing-they-were-nazi-spies-180957324/.

Fourth Circuit found, the Order's primary purpose is to discriminate against Muslims. No. 16A1190, App. 48a-52a. The Order is consistent with President Trump's call as a candidate for "a total and complete shutdown of Muslims entering the United States until our representatives can figure out what is going on." *Id.* at 49a. This call for a "Muslim ban" was repeated throughout the 2016 presidential campaign, accompanied by further statements from candidate Trump that "Islam hates us" and that "we're having problems with the Muslims." *Ibid.* The proposed "Muslim ban" later morphed into a plan to "call it territories" and impose nationality-based travel restrictions. *See id.* at 49a-50a. The President, upon signing the predecessor version of the Order, stated that it was meant to protect the nation from entry by foreign terrorists—and then explained, "We all know what that means." App. 13a. It is likewise plain to members of the faith community that a desire to exclude Muslims drove the issuance of this Order.

Were the Court to reinstate the Order, despite such clear evidence of animus, it would send a message that religious-based discrimination is tolerable so long as it is framed based on nationality. It would provide an Establishment Clause-evading roadmap for governments at all levels that wish to enact policies disfavoring Muslims or members of any minority faith.

C. The Stay Requests Vastly Underestimate The Public Harms Caused By The Order

In considering whether to grant a stay, the Court considers "where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009). Applicants attempt to downplay the public harm resulting from the Order, contending that it injures only "a single individual" (in the case that was before the Fourth Circuit), No. 16A1190, App. 2, 40, or that the harms to the public are no more than hurt feelings.

But the Establishment Clause itself is a clear recognition by our founders that when the government picks and chooses among religions, it harms the broader fabric of our society and creates an injury of constitutional dimensions. And "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). Consideration of the public-interest factor should therefore include the harm done to all Americans of faith who recognize the Order as an act of official disfavor toward Islam and, thus, as an assault on their own religious liberty.

The Order is also directly harmful to Muslims who are entitled to freely practice their faith in the United States. The Order and its predecessor have disrupted the lives of Muslim Americans who fear that they are being targeted for exclusion and could face separation from their families. *See, e.g.*, Neil Munshi, "Muslim Americans Express Anxiety Over Trump Travel Ban,"

Financial Times (Feb. 2, 2017);[3] *see also* Faiyaz Jaffer, "The Travel Ban Has Been Particularly Harsh on Shiite Muslims," *The Gazette* (May 26, 2017) (describing the story of a college student who feared that, if he went to say his final goodbyes to a dying relative in Iran, he might be unable to return to the United States to study).[4]

The two Orders have separated couples engaged to be married and caused family members to miss weddings of their loved ones, as well as births and deaths—key moments in the personal and religious life of a faith community. *See* Jack Healy & Anemona Hartocollis, "Love, Interrupted: A Travel Ban Separates Couples," *N.Y. Times* (Feb. 8, 2017);[5] Ed Pilkington, "Trump Travel Ban Crackdown Turns Wedding Celebration Into a Family Separation," *The Guardian* (Apr. 14, 2017).[6] The Order's predecessor interfered with religious practice and community by barring prominent Muslims with citizenship or dual citizenship in the affected countries from fulfilling long-planned speaking engagements at conferences, religious services, festivals, and universities in the United

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[3] https://www.ft.com/content/ba9f2d88-e905-11e6-893c-082c54a7f539?mhq5j=e2.

[4] http://gazette.com/the-travel-ban-has-been-particularly-harsh-on-shiite-muslims/article/1603972.

[5] https://www.nytimes.com/2017/02/08/us/love-interrupted-a-travel-ban-separates-couples.html.

[6] https://www.theguardian.com/us-news/2017/apr/14/trump-travel-ban-visa-iran-wedding.

States. *E.g.*, *Aziz v. Trump*, No. 17-cv-116, 2017 WL 580855, at *2 (E.D. Va. Feb. 13, 2017).

Even though the current Order has been enjoined, its existence still harms non-citizen Muslims who live in the United States and have planned to travel overseas to visit family members, fulfill work obligations, or participate in faith-based activities. They now fear leaving the country out of concern that—if this Court were to issue the requested stays—they may not be permitted to return.

The Order also has harmed all American Muslims at a profoundly deeper level. It has ostracized those who simply want to practice their faith freely and live peacefully as neighbors, students, colleagues, families, and members of their communities. It has contributed to an environment in which Muslims are increasingly subject to violence, harassment, and discrimination because of their faith. This is borne out by recent hate crimes that have been perpetrated against Muslims[7]—or even people *perceived* to be Muslims.[8]

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[7] *See* Doug Criss, "Mosques Targeted in 2017," *CNN.com*, http://www.cnn.com/2017/03/20/us/mosques-targeted-2017-trnd/index.html. The map, which contains data from January through March 2017, describes thirty-five reported incidents of attacks against mosques, including suspected arson and spray-painting of anti-Muslim epithets. *See also*, *e.g.*, Bill Lindelof, "Two Suspected Hate Crimes in Less Than Two Weeks at Davis, Roseville Mosques," *The Sacramento Bee* (Feb. 1, 2017), http://www.sacbee.com/news/local/crime/article130135154.html.

[8] *See* Daniel Victor, "Three Men Stood Up to Anti-Muslim Attack. Two Paid With Their Lives," *N.Y. Times* (May 28, 2017) (describing stabbing victims' efforts to intervene when a man

That the Order's proffered justification was based on the threat of terrorism makes the Order all the more pernicious.[9] Conflating "Muslims" with "terrorists" obscures the fact that most victims of terrorism are themselves Muslims. Indeed, a vast number of refugees fleeing war, persecution, and human atrocities are Muslim. Attempts to justify the Order based on the threat of terrorism—and to treat populations of entire Muslim-majority countries as potential terrorists—only compound anti-Muslim vilification.

These harms would be revisited if this Court were to issue the requested stays. Muslims living in the United States would be subjected anew to what they and many others rightly view as official condemnation of their faith. This harm is not trivial, and it should receive significant weight in this Court's consideration of the stay factors.

D. The Order Precludes People Of All Faiths From Fulfilling Their Moral Obligation To Aid Refugees

The Order also conflicts with faith-based organizations' ability to carry out their missions by assisting those in need. Amici's faiths teach that one must not forsake people in their time of crisis. The moral and religious imperative to "help the stranger" is especially

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shouted anti-Muslim insults at two women in Portland, Oregon, and noting that one of the women is not Muslim), https://www.nytimes.com/2017/05/28/us/portland-stabbing-victims.html.

[9] The Order also invokes the specter of "honor killings," which is a coded term that reinforces the stigmatization of Muslims as violent and backward. *See* No. 16A1190, App. 53a n.17.

compelling in the case of refugees, who are among the most vulnerable people in the world. By definition, refugees are people who have been forced to flee their homes because of persecution or conflict and need sanctuary because they do not have the protection of their own governments. U.N. General Assembly, *Convention Relating to the Status of Refugees*, art. 1A(2), United Nations, Treaty Series, vol. 189, at pp. 153-54 (July 28, 1951).

Many amici and their members thus actively participate in aiding refugees, assisting them with resettling in the United States and working with congregations to provide them with practical, emotional, and spiritual support as they build new lives. Amicus Church World Service exemplifies the crucial role these agencies play. It alone has assisted more than 850,000 refugees since its founding in 1946. Amicus Disciples Home Missions of the Christian Church (Disciples of Christ) has resettled more than 38,000 refugees since 1949 and provided legal assistance to countless immigrants, and it actively engages its congregations and church members to support immigrants and refugees. Some Roman Catholic religious orders, including ones represented here through the Leadership Conference of Women Religious, trace their very existence in the United States to nuns who immigrated here specifically to work with immigrants.

Allowing the Order to go into effect would prevent amici from fulfilling their missions. Section 6 of the Order suspends further processing of refugees under the U.S. Refugee Admission Program and reduces the

total number of refugees who may be admitted to the United States for the 2017 fiscal year by more than half. The countries named in the 90-day entry ban imposed by Section 2(c) of the Order include several, such as Somalia and Syria, that have significant refugee populations.

The Order, even as enjoined, already has devastated faith-based refugee organizations' ability to maintain operations and services moving forward. Episcopal Migration Ministries announced in early April 2017 that cutbacks forced by the Order have resulted in reductions of more than twenty percent in its national staff and in its affiliate network, which will hamper assistance to refugees already resettled as well. Mary Frances Schjonberg, "Trump's Immigration Policies Force Reduction of Episcopal Church's Refugee Resettlement Network," *Episcopal News Service* (Apr. 4, 2017).[10] World Relief announced in February 2017 that, as a direct result of the Order's reduction in future refugee admissions, it is closing five offices and laying off 140 staff members. Press Release, World Relief, World Relief Announces the Layoff of 140+ Staff and Closure of Five Local Offices Due to the Trump Administration's Reduction in Refugee Resettlements in the U.S. (Feb. 15, 2017);[11] *see* Dan Barry, "A

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[10] http://episcopaldigitalnetwork.com/ens/2017/04/04/trumps-immigration-policies-force-reduction-of-episcopal-churchs-refugee-resettlement-network/.

[11] https://www.worldrelief.org/press-releases/world-relief-announces-the-layoff-of-140-staff-and-closure-of-five-local-offices-due-to-the-trump-administrations-reduction-in-refugee-resettlements-in-the-us.

Resettlement Mission Upended by the Sweep of a President's Pen," *N.Y. Times* (Feb. 5, 2017).[12]

Reinstating the Order now, just as the government has begun to ease refugee restrictions,[13] would further harm not only refugees who would be denied entry but also the vitality of the entire refugee-assistance and -resettlement mission of amici and other people of faith going forward.

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[12] https://www.nytimes.com/2017/02/05/us/lancaster-refugees-trump-travel-ban.html.

[13] *See* Gardiner Harris, "U.S. Quietly Lifts Limit on Number of Refugees Allowed In," *N.Y. Times* (May 26, 2017), https://www.nytimes.com/2017/05/26/us/politics/united-states-refugees-trump.html.

CONCLUSION

The applications for a stay should be denied.

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